

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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T.G., on behalf of herself and her minor child, A.A.,

**DECLARATION OF
THERESA CROTTY**

Plaintiff,

23-cv-8569 (MKV)

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

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THERESA CROTTY, under penalty of perjury, declares pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Legal Advisor of the Impartial Hearing Order Implementation Unit (the “IHOIU”) at the New York City Department of Education (the “DOE”). I have worked in the IHOIU since September 2022. In this role, I am responsible for advising IHOIU on ensuring the implementation of impartial hearing orders, both pendency orders and final orders of impartial hearing officers, and on issues implicating the implementation of impartial hearing orders in federal court actions against the DOE. Prior to IHOIU, I worked on the Appeals team of Special Education Unit (“SEU”) in the office of the General Counsel at the DOE from June 2014 to September 2022.

2. I submit this declaration in Support of Defendant’s Motion to Dismiss, dated June 4, 2024.

3. This declaration is based on my personal knowledge, on my review of documents and records maintained by the DOE, and on conversations I have had with DOE

employees.

4. On January 29, 2022, the impartial hearing officer (“IHO”) issued a Findings of Fact and Decision (“FOFD”), and a corrected FOFD in Case No. 211664. In the corrected FOFD, the IHO found that DOE did not meet its burden in offering A.A. a free appropriate public education (“FAPE”) for the 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022 school years.

5. **FOFD Item 1:** The DOE shall provide the student with a twelve-month intensive behavior analytic, full-time program, which follows ABA principals, where [the student] will receive 1:1 instruction, with one (1) hour of BCBA Supervision for every five (5) hours that the Student is in the classroom; and

6. Item 1.1: [I]n the event the DOE determines that such program is only available in a nonpublic school that, a deferral shall be made to the CBST to make such recommendation; and

7. Item 1.2: Until such time as the above-ordered placement in the twelve-month intensive behavior analytic program is provided to the Student, the DOE shall provide thirty (30) hours per week of 1:1 ABA Instruction to the Student on a push-in basis, into the Student’s classroom along with six (6) hours of BCBA Supervision.

8. The DOE was made aware that the DOE would directly fund the student’s school-based ABA services. The DOE was advised, by email dated March 16, 2022, that the services would be provided by the Parent’s chosen provider, Breakthrough Foundations starting on April 1, 2022. Exhibit 1, attached.

9. Based on the invoices provided and DOE records, school-based ABA services began on June 8, 2022. DOE processed payment and payment was issued for 37.25 hours

of school-based ABA services provided in June 2022. Payment was issued by check dated August 3, 2022.

10. The DOE has continued to process payment for in-school ABA services pursuant to Item 1.2.

11. Based on the invoices provided and DOE records, school-based BCBA services began on June 1, 2022. DOE processed payment and payment was issued for 18.5 hours of school based BCBA supervision provided in June 2022.

12. The DOE has continued to process payment for school based BCBA supervision pursuant to Item 1.2.

13. **FOFD Item 2:** The DOE shall fund fifteen (15) hours per week of 1:1 ABA instruction at home.

14. DOE received invoices for home-based ABA from Breakthrough Services. Based on DOE records, the first date of service identified in the billing was May 23, 2022.

15. Payment was issued for 24 hours of home-based ABA services provided in May and June 2022. Payment was issued by check dated August 3, 2022.

16. The DOE has continued to process payment for home-based ABA services.

17. **FOFD Item 3:** The DOE shall fund three (3) hours per week of BCBA Supervision of the at home 1:1 ABA instruction.

18. DOE received invoices for home-based BCBA Supervision from Breakthrough Services. Based on DOE records, the first date of service identified in the billing was May 16, 2022.

19. Payment was issued for 10 hours of home-based BCBA services for May and June 2022. Payment was issued by check dated August 3, 2022. The DOE has continued to process payment under Item 3 through March 2024.

20. **FOFD Item 4:** The Student's IEP shall be revised to include:

- One (1) hour per month of mandated parent counseling and training; and
- Five (5) thirty (30) minute sessions of speech language therapy per week; and
- Three (3) thirty (30) minute sessions of mandated occupational therapy services per week; and
- Three (3) thirty (30) minute sessions of mandated physical therapy services per week.

21. FOFD Item 4 was implemented by the School Based Support Team on June 27, 2024.

22. **FOFD Item 5:** The DOE shall conduct an assistive technology evaluation of the Student, and in the event that such evaluation is not conducted within thirty (30) days of the Decision, this evaluation shall be conducted by a properly qualified individual of the Parent's choosing, at the market rate.

23. To date, the parent and/or an evaluator has not submitted invoices for an AT evaluation. If the Parent has obtained an AT evaluation of A.A. by a properly qualified individual of the Parent's choosing, the DOE is prepared to process payment at market rate, as ordered, upon the Parent or evaluator providing the DOE with the required payment information including invoices and a copy of the evaluation.

24. **FOFD Item 6:** The Student and the Parent should be provided with appropriate round-trip special transportation between the Student's home and the Student's nonpublic school placement recommended by the CBST, or program the Student is attending where he is receiving the thirty (30) hours of ABA Instruction and six (6) hours of BCBA Supervision; with such transportation provided from the Student's home at the closest safe curb location to such program.

25. **FOFD Item 7:** As compensation for the deprivation of FAPE from 2017 through 2022, the IHO ordered the DOE to fund the following compensatory services for the Student, to be provided by a qualified professional of the Parent's choosing, at the market rate:

- a. 7.1: Two Thousand Seven Hundred and Forty-Five (2,745) hours of ABA instruction;
- b. DOE was advised that these services would be provided by Breakthrough Services on March 16, 2022. According to DOE records, services began on July 5, 2022, the first payment was issued by check dated October 12, 2022.
- c. Payment has been issued for 677.75 hours of compensatory ABA instruction. DOE will continue to process payments as applicable upon receipt of invoices for compensatory ABA services until the compensatory bank for this service has been exhausted.
- d. 7.2: Five Hundred and Forty-Nine (549) hours of BCBA supervision;
- e. DOE was advised that these services would be provided by Breakthrough Services on March 16, 2022. According to DOE

records, services began on July 7, 2022, and the first payment was issued by check dated October 12, 2022.

- f. Payment has been issued for 102 hours of compensatory BCBA instruction. DOE will continue to process payments as applicable upon receipt of invoices from the provider for compensatory BCBA services until the compensatory bank for this service has been exhausted.
- g. 7.3: Sixty-one (61) hours of speech language therapy (“SLT”);
- h. 7.4: Sixty-One (61) thirty (30) minute sessions of occupational therapy (“OT”);
- i. 7.5: Sixty-one (61) thirty (30) minute sessions of physical therapy (“PT”).
- j. To date, the parent and/or a provider has not submitted invoices for Items 7.3, 7.4, or 7.5. The DOE is prepared to process payment for these services, in its ordinary course of business once the services are rendered and the Parent or the provider submits the required payment information including invoices.

26. **FOFD Item 8:** Additionally, the IHO ordered the DOE to conduct an audit to ascertain what, if any, speech language, occupational therapy, and physical therapy services the Student did not receive from the 2017/2018 school year the date of the decision, and that such amount shall be added to the number of compensatory services being ordered above; and

27. Item 8.1: If such audit was not conducted within thirty (30) days of the Decision, then, in addition to the Compensatory Services, the District shall provide another one

hundred and twenty two (122) thirty (30) minute sessions (or sixty-one (61) hours), each of compensatory occupational therapy and physical therapy services to the Student.

28. To date, the parent and/or a provider has not submitted invoices for Item 8.1. The DOE is prepared to process payment for these services, in its ordinary course of business once the services are rendered and the Parent or the provider submits the required payment information including invoices.

29. On November 8, 2023, Breakthrough Foundations confirmed that they did not have any outstanding payments on this matter. See, Exhibit 2.

Dated: Brooklyn, New York
June 4, 2024

Theresa Crotty

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